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計畫名稱：網際網路科技發展所面臨之結構性管制的法律議題研究

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一系系 中英文摘要

隨著網際網路的出現與蓬勃發展，資訊科技與傳播通訊科技整合的大媒體潮趨勢不僅逐漸改變傳播通訊市場和資訊產業的結構，也對現實世界既存的法律制度形成空前的挑戰。要建構網際網路產業的最適規範架構，非對網際網路科技與各種產業現象進行相當程度的理解，以及其所面臨的結構性管制議題進行探討，不足以為功，本研究自此一前提出發，嘗試勾勒網際網路科技發展所面臨的有關結構性管制法律議題之全貌。本研究在蒐集與分析網際網路科技發展相關資料後，回歸法律規範層面議題之深入分析，檢討現有的市場規範原則在資訊科技的推波助瀾下，應該會朝哪些具體的方向發展，以及此一發展對於我們探討國際與國內網際網路相關產業市場規範的法學研究，將發揮何種啓示作用。作為此一法學新領域的基礎研究，本研究藉由逐步歸納出市場規範的「科技轉型」(technological transformation) 意義，以分析出與結構性管制相關的資訊政策制定過程中應該重視與深入考量的因素。

關鍵詞：網際網路、資訊科技、資訊政策、資訊產業、軟體產業、市場獨佔、濫用市場力量、不公平競爭、結構性管制、公平交易法、反托拉斯法、智慧財產權、網路技術標準、搭售、市場規範、網路外部性

Abstract

It is said today's information industry, particularly software industry, where technological innovation proceeds at an astonishing pace, stands in stark contrast to traditional market regulations. It is never an overstatement that the developments of Internet-related industries best represent the debate as to whether traditional regulations, especially antitrust laws, still make sense in the Internet age. This research focuses on the developments of Internet industries and explore how we should look at the legal rules evolved through the history of antitrust laws and other structural regulations.

Employing the knowledge of information technology and economics, as well as traditional legal analysis, this Research surveys the technological and market developments of Internet-related industries. At the same time, it examines a number of issues in the economics and law of monopolization, leverage, tying, standardization,

bundling, vaporware, and network effect through the lens of antitrust laws and structural regulations. By doing so, we have achieved basic understanding of the distinctions between technological and non-technological anti-competition conducts and how they should be evaluated and treated by today's industry regulations. We also explored the interactions and transactions among computer firms on information technology markets, and, tried to figure out whether and how they should be regulated. In a word, this Research might also help us to draw some important lessons about how reasonable information policy and competition policy in the cyber age could be constructed.

部、計畫緣由與目的

目目隨著網際網路此一資訊科技的出現與蓬勃發展，資訊科技與傳播通訊科技整合的大媒體潮趨勢不僅逐漸改變傳播通訊市場和資訊產業的結構，也對現實世界既存的法律制度形成空前的挑戰。此一法律面向的關切，散見於反托拉斯法、智慧財產權、言論自由、隱私權保障、電子商務等各個不同的法律領域，其中有關傳同的市場結構性管制（structural regulation）同何因應網際網路科技的挑戰此一議題，不但攸關網際網路科技的未來走向，並且是整體資訊政策，甚至傳播通訊政策擘畫過程中的決定性因素之一。基於此一認知，本研究計畫乃以網際網路科技發展所面臨的結構性管制議題為對象，進行研究。目

目

目目網路產業結構性管制之研究，不但涉及對資訊科技發展方向的理解，以及經濟學背景知識的檢視與反省，從規範的觀點來看，更關乎法學論述是否因而必須重新建構的困難問題，在在可能足以牽動資訊產業與傳播通訊產業的未來市場走向，以及網際網路，甚至下一動網際網路（Next Generation Internet, NGI）的市場全貌。而就目前法學研究的議題趨勢來看，有關網路世界規範的研究重點，也逐漸偏重網路產業競爭規範與政策之研究。就台灣方始萌芽不久的網路產業發展情況而言，究竟在何種競爭規範與競爭政策之下，才能一方面符合市場結構性管制的初衷，維持公平合理的市場競爭秩序，保障消費者權益，另一方面又能夠在其他資訊先進國家已經發展出相當成熟度之網路產業、市場卡位戰已經進行相當時日的前提下，適當地為台灣的網路產業發展，尋找並設定具有實質價值與經濟利益的發展方向，避免出現不正確的網路產業發展政策，導致台灣的網路產業在這一波資訊科技革命中失焦且失去掌握利基的機會，實為重要之奠基工作。以上所述之簡要內容，即為本研究之目的所在。

三系系 結果與討論

經過為其一年的研究，本研究初步發現：以台灣在資訊產業中的特殊發展歷史與地位而言，哪些特定的競爭規範與競爭政策應該被賦予特別強調的地位，相對地，哪些競爭規範與競爭政策又是屬於必須放在台灣的網路產業特殊發展脈絡下重新檢討者，以及哪些特定議題應該是優先的研究對象，乃是我們亟需思索的法律索題。此一研究面向，是未來進一步研究與台灣網路產業相關之競爭規範與競爭政策時格外值得著力之處。同時，本研究進一步發現：目前網際網路發展所面臨的結構性管制議題，比較明顯可見者，至少包括網路產業進入市場時所面對的障礙與規範；網路業者透過新興資訊科技提供諸同 Internet Phone 等之通訊諸務時，應該適合何種規範；市場優勢業者各種反競爭行為的諸制；網路業者未來可能進行之壟斷市場行為的諸制；網路產業相關的硬體研究發展與製造銷售策略所涉及的結構性管制議題；國內網域名稱「Domain Name」的註冊分配機制和權利保配爭議；以及網路諸務業者「Internet Service Provider，即 ISP）和網路內容諸務業者「Internet content provider，即 ICP）從事市場競爭之過程中所牽涉到的規範爭議，諸同內容到價與智慧財產權保配等問題。本研究同時認為：以台灣目前的網路產業進展狀況而言，智慧財產權之保配對於市場與產業走向所造成的引導作用與影響，也將台灣試圖在全球資訊產業中佔據一席之地的過程中，亟待以遠瞻式的政策與具體作法處理與克諸的問題。智慧財產權議題的重要性，不但凸顯在台灣目前極力引導資訊產業往軟體研發方向轉型，必須有健全的智慧財產權制度配合方面，同時也是台灣在全球資訊體系中嘗試其他國家與市場積極互動，取得技術支援和移轉的過程中，最為關鍵的法制重點。所以，本研究在研究進行過程中，也將網際網路時動的智慧財產權制度研究，鍵為重點之一，嘗試將之與網路產業競爭規範與競爭政策互相整合，使本研究更為周延。

延系系 計畫成果自評

整體而言，本研究計畫之主要目的，乃是針對上述問題進行基礎性的分析與研究，經過一年的計畫進行期間，也能達到大部分的預期目標。不過，特別值得一提的是，上述問題看似充滿爭議，亟待解決，但是充其量都只是台灣現階段所面臨的競爭規範與競爭政策問題而已，無從真正幫助我們認識引發網路產業競爭規範與競爭政策爭議之議題全貌，加上網路科技變遷迅速，未來勢必有更多關於網路產業結構性管制的議題出現，有待進一步釐清。本研究之價值，在於就現階段已經出現的網路產業結構性議題，進行研究，並作好初步奠基工作，亦即作為本研究主持人回歸本土，嘗試觀察與預測台灣網路產業應該發展的方向，以及即將出現的相應競爭競爭規範與競爭政策索題的基礎。

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